

Public Defender News



Chief's Corner

Special points of interest:

- [Email Guidelines](#)
- [St. Dennis Decision: No per se conflict](#)
- [Update on Records Management Project](#)



It was a pleasure to see all of you at the annual meeting—other than the seven of you that beat me at poker!

With the election over, my attentions are focused on both the filling of vacancies and the legislature. We are proud of Olivia Norlin and Rick West. Olivia has been elected county attorney for Dawson County and hopes to improve the criminal justice system from her new position. Rick West is the new justice of the peace for Gallatin County. The advertising to replace Rick and to place an investigator in Region 4 has begun. Both positions will be filled by January 1.

I am actively working on replacing Olivia as regional deputy public defender for Region 10 (Glendive). The same position in Region 2 (Missoula) is being vacated by Ed Sheehy's move to the Major Crimes

Unit. I am confident that I will select new regional deputy public defenders for both regions within the next month.

It is great news that the unions and the Governor have reached a pay plan agreement that provides for some pay increases in the next two fiscal years. The plan, of course, has to be passed by the legislature. I also expect some attempts to revamp the public defender system, i.e. limit us just to felonies, etc. It is very important that all of us get behind the legislative outreach program we will be rolling out before Thanksgiving. Legislators are much more likely to listen to people who live and work in their districts.

I intend to keep you posted on legislative happenings but let's all remember that what matters is our status on the final day of the session.

Keep up the good work!

Randi

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Congratulations!

The following OPD staff recently passed the bar exam

Please offer your congratulations to:

Matthew Wilcox, Appellate Office

Ashley Young, Kalispell

Audrey Schultz, Billings

Mike Park, Billings

Stephanie DeBoer, Billings

Way to go!





Butte and Missoula student workers Jacque Welch, Cara Mooney and Stevey Still

"Thanks to the hard work of students and support staff around the state, our mountains of paper records are almost under control."



Records Management Project Update

By Cathy Doyle

Our records management project is about to begin a new phase! Thanks to the hard work of students in several offices around the state, as well as many support staff toiling without benefit of student assistance, our mountains of paper records are just about under control. Thousands of files from the old Missoula, Yellowstone, Cascade, Gallatin, Deer Lodge, Butte-Silver Bow and Lewis and Clark county offices have been sorted and processed, then destroyed or inventoried based on our approved retention schedule. Although we made significant progress this summer, we did request and receive a six-month extension on our Montana Board of Crime Control subgrant to allow us to complete the taming of the paper tiger, and begin planning for electronic records management.

Between now and the end of the grant period, now scheduled for March 31, we hope to make some progress on preparing for our "less paper" future. The JustWare upgrade that was recently rolled out has one very important feature for records management purposes. The requirement to enter a destruction date, along with the optional file location field, will allow us to more easily manage both our paper and our electronic records. To help facilitate that, the student workers will begin transferring destruction dates from the existing inventory spreadsheets into JustWare. This will enhance the ability to generate reports on files that have met the retention period when shredding time comes around each January.

We are also investigating ways to improve the ability to scan documents into the JustWare filing cabinet, and to search, retrieve, and apply retention policies to them. Stay tuned for further progress in this area!

My Email Ended Up Where????

Some of you may remember seeing headlines last spring regarding a personnel dispute in Yellowstone County. News coverage of that story included publication of numerous fairly embarrassing email messages in local papers. It is a good reminder for all of us as public employees that there is no right to privacy when using our state email accounts. If you don't want it on the front page (or forwarded to someone you didn't intend to read it), it should not be sent through your state email account.

- ♦ All messages created, sent or retrieved over the state's systems are the property of the State of Montana. Employees should not have expectations of privacy for **any** messages and should use their best judgment in sending confidential messages over the email system.
- ♦ The confidentiality notice that may be included in your signature at the bottom of outgoing email does not ensure that the information will be treated as private. It may still be public information, subject to public distribution.
- ♦ In drafting and sending email messages, employees should not include anything they are not prepared for the public to read. Email messages should resemble typical professional and respectful business correspondence.
- ♦ Communications sent or received by the email system may be "documents" under Article II, Section 9 of the Montana Constitution or public records under Section 2-6-101, MCA, and should be generated and maintained accordingly.
- ♦ Use of graphics in auto-signatures or other parts of messages or attachments should be avoided because they greatly increase the size of a message.
- ♦ Employees should use care and discretion when sending email to mailing lists and/or large groups. Sending a large file to multiple recipients could severely impact the network. Contact your network administrator for help with disseminating these types of documents.
- ♦ Personal use of the state's email system should be limited and brief.

More information is available at <http://www.publicdefender.mt.gov/forms/pdf/502-ComputerUse.pdf> or http://itsd.mt.gov/content/policy/policies/Legacy_Policy/Statewide_Policy_Electronic_Mail.pdf

Do You Know Your JustWare Super User?

By Sarah Wardinsky

At a recent Labor Management meeting to discuss support staff issues, a discussion took place regarding JustWare matters, the upgrade roll out, and what changes staff might expect. When a reference was made regarding the “super users” who have been identified in each of the OPD offices, we discovered that many of the support staff representatives were not familiar with the term.

What is a super user? The super user is a JustWare point of contact between local office personnel and IT and JustWare staff. Rather than communicating issues to all OPD employees, the super user is contacted to communicate changes to their co-workers. They also receive training so that they can become the “go-to” person in their office when people are experiencing problems or need assistance. This allows employees to quickly receive personal attention and reduces the load on our limited number of IT and JustWare staff. When the super user is unable to resolve a problem, they can communicate with the appropriate IT or JustWare staff person for additional assistance.

Each office has identified one or more super users. Let them know when you need help!

Region 1: Anna Garza (Kalispell); Mary Roth and Juanita Nystrom (Polson)

Region 2: Craig McKillop and Anita Driscoll (Missoula); Diane Stenerson (Hamilton)

Region 3: Jason Kindsvatter and Chris Kitch

Region 4: Wes Stewart

Region 5: Ann Allen (Butte); Mary Brown (Anaconda)

Region 6: Beth Rucinsky

Region 7: Gail Hikel

Region 8: Sarah Wardinsky

Region 9: Kristine Kerr and Marilyn Pulver

Region 10: Ronda Hansen

Region 11: Linda Conard

Appellate: Sarah Braden

Major Crimes: Katrina Sherman



The super user is the “go-to” person in each office when people need assistance with JustWare.

Comings and Goings

In addition to the upcoming departures of Olivia Norlin and Rick West, and Ed Sheehy’s move to Major Crimes, as Randi mentioned previously, here are other changes by region:

Region 1 (Kalispell)

Additions: Benjamin Kolter, Attorney

Region 2 (Missoula)

Departures: Kimberly Deschene, Attorney

Region 4 (Helena)

Additions: Carol Seaman and Judy Curtiss, Secretaries

Region 5 (Butte)

Additions: Rob Behr, Investigator (transfer from Miles City)

Departures: Sean Arvish, Investigator

Region 6 (Havre)

Departures: Karla Mae Bosse, Attorney

Region 8 (Bozeman)

Additions: Christine Thomas, Legal Secretary

Departures: Heidi Morrison, Legal Secretary

Region 9 (Billings)

Additions: Stephanie DeBoer, Attorney

Departures: Frank Pioscos, Attorney

Region 10 (Glendive)

Additions: Roy Perry, Investigator

Region 11 (Miles City)

Additions: Lissa Power, Investigator

Appellate Office

Additions: Angela Rutherford Stagg, Legal Secretary

Departures: Rachel Smith, Legal Secretary

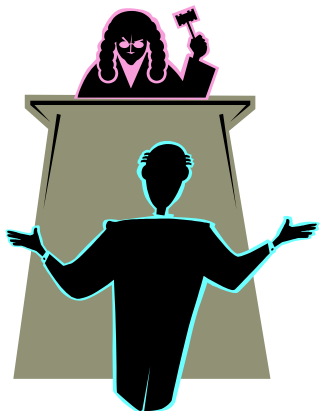
Central Office

Additions: Randa Colling, Administrative Assistant;

Aleta Richardson, Accounting Tech

Departures: Daun Wick, Accounting Tech





*Quote of the month:
“Read TLC filings and
read affidavit twice in
disbelief...”*

Frank McGee, Butte

Contractor Corner

By Larry Murphy, Contract Manager

I'd like to congratulate the San Francisco Giants on winning their first World Series since 1954. I lived and died with that team while growing up. Sey Hey Willie making “the catch” in the Polo Grounds. Then Horace Stoneham moved my beloved Giants to Frisco. What a bummer!

So here is what's new in the contract attorney world. The Legislature is gearing up again and I foresee tight budgets. I'm not sure if you folks have selected a “fearless leader” to speak on your collective behalf, but I strongly suggest that you do. At a minimum, speak to your local legislators and voice your concerns about low pay.

Lynn MacMillan tells me that we have a number of LexisNexis licenses available. If any of you are interested, please call her at (406) 496-6385.

The majority of the contract attorneys have submitted their updated Summary of Education and Experience. Those of you who haven't, please do. I have asked our Commission to modify the Contract Attorney Standard to allow you to simply send OPD a copy of your State Bar CLE affidavit each year. They are working on that proposal.

Speaking of the Standards, I am required to do a “proficiency determination.” This process consists of an in-court observation, a review of your billing, an audit of your cases as to length of time expended before closure, a writing sample, and input from clients, judicial personnel and others. The in-court observations will be done primarily by the Regional Deputies, Randi and me. So be prepared, appropriately dressed and on time for your court appearances. As you know from Lynn's emails and my phone calls, we have been monitoring your billing practices from the get-go. The case audit is done on a monthly basis, where claims from a preselected Region (Region 1 in January, Region 2 in February, etc.) are reviewed with an eye as to how long they have been open. We audit misdemeanor cases open for more than 180 days and felony cases open longer than 250 days. You may have received an email or letter from Lynn asking “why.” If you haven't, you most probably will. I have been requesting copies of motions and supporting briefs from you. I review these for writing proficiency and uniqueness. Some are referred to Eric Olson for inclusion in OPD's brief bank. The Central Office and the Regional Offices are usually contacted with complaints from clients or judicial personnel. You will hear from me when we receive a complaint. Sometimes, believe it or not, we even hear good things.

Additionally, the Standards require that OPD determine if our contract attorneys are complying with OPD representation Standards. Over the last few months I met with a number of you and reviewed cases you have handled for OPD. This review is done in a one-on-one interview. I select a case in each area in which you practice, that is, criminal, juvenile, abuse and neglect, etc. We will discuss each case and compare your representation with the appropriate Standard. Each case review takes approximately 30-45 minutes. Initially, I randomly selected attorneys to complete this Standards compliance requirement, and I expect to meet with each of you over the course of the next two years.

Finally, OPD has been informed that a number of judges have been assigning specific attorneys to cases. The judges are statutorily required to appoint OPD and then OPD assigns the case to a specific attorney. If you have been appointed to a case by a judge, please notify your Regional Office immediately. You will most probably remain on the case, but the Regional Office will assign an OPD number to the case. As a word of warning, if the Central or Regional Office receives a claim without an OPD number assigned to a case, the claim will be returned to you.

A Happy Thanksgiving to all, including those Giants.

Larry



OPD SPOTLIGHT

Emily Judd, Assistant Public Defender, Bozeman

By Peter Ohman

Emily Judd has been working in the Bozeman office for approximately one year. She was born and raised in Billings and attended Concordia College in Moorhead, Minnesota. Emily graduated from the University of Montana Law School in 2009. Since joining the OPD she has been working primarily in the Gallatin County Justice Court and Belgrade City Court with an occasional hearing in the District Courts. Like most of us Emily handles a large caseload with a variety of cases, although her most common defense is of DUI clients. While in law school Emily did a stint as an intern with the Missoula City Prosecutors Office. The experience gave her a broader perspective and ability to see holes in the State's case from having worked both sides.

Emily's interests outside of her life with the OPD lie primarily with running long distances throughout southwest Montana. Her normal weekend includes a 50 plus mile jaunt in the mountains. In fact, she is on her way to becoming one of the premier long distance endurance runners in the West. Emily recently came in second at the Bighorn Trail Run completing the 100 mile course in 26 hours and 49 minutes. She regularly trains with national champion Nikki Kimball, who has given her confidence to compete at an ever higher level.

We in the Bozeman office have no idea how she does these things and still manages to show up to work with a smile and positive attitude. She's also so modest you would never know she ran an ultramarathon over the weekend unless you asked. So, if any of you out there find yourself in Bozeman one weekend and want go on a grueling run with Emily, just look her up and we're sure she'd be glad to drag you along ... that is, if you can keep up.



Ann Allen, Administrative Assistant, Butte

By Sherry Staedler

Ann has worked for the Region 5 (Butte/Anaconda) office since 2006. She is the glue that keeps the office together. She juggles a large number of tasks without complaint. Ann is truly a jill of all trades. She not only handles difficult people on a daily basis, she also schedules appointments, answers phones, types legal documents, handles questions from contract attorneys and their staff, acts as our fleet manager, tracks down financial information for IQ's, and is a JustWare super user. Ann is always very pleasant and comes to work every day with a smile on her face. She is a great team player, treats everyone respectfully, is always willing to help, and is a great asset to our office. . . as are the Girl Scout cookies and candy she keeps in stock!



Appellate News

By Joslyn Hunt

The Office of the Appellate Defender has been busy. We have a great team in place, and we have seen great results lately with several reversals and concessions. Way to go team!

Recently, the Montana Supreme Court decided *State v. St. Dennis*, 2010 MT 229, which dealt with, in part, whether it was a per se conflict for one OPD region to represent a defendant with a different OPD region representing the co-defendant. The Court noted the unique nature of public defender offices, including the fact that (1) such offices are not-for-profit with single sources of clients; (2) OPD does not solicit clients or accept referrals; and (3) OPD attorneys are salaried employees, so their compensation is not driven by their successes and failures.

Looking to Montana's sister State, Wyoming (the State upon which Montana's system is based), the Court further noted that public defender attorneys provide services to their individuals clients, not to the office. Hence, public defender attorneys have no incentive to favor one client over another. Consequently, adopting an approach other than a case-by-case analysis needlessly jeopardizes the rights of individual defendants from the attorneys most skilled in that area of the law. Moreover, like Wyoming, Montana's small community has a limited number of attorneys, so experienced public defenders are valuable assets. Paying outside counsel every time there are multiple defendants is quite an expense for the taxpayers of the state. Hence, adoption of a per se conflict rule does not justify the additional expense, where there has been no showing of an actual conflict of interest and no showing of prejudice.

Based on the above, the Court concluded that the better analysis to employ for the situation faced in *St. Dennis* was a case-by-case analysis. In applying that analysis to the facts of the case, the Court stated that OPD has many of the safeguards in place, including separate offices, separate computers, separate staff, and separate phone lines. The Court held that the organization and operation of OPD--so long as OPD follows all protocols faithfully and strictly--does not, by itself, create an actual conflict of interest. Moreover, there was no evidence presented by *St. Dennis* that OPD's safeguards failed.

The Court warned that "It is imperative . . . that each OPD attorney adheres rigorously to these policies and rules." If the precautions and safeguards, including ethical walls, are ignored or compromised in any manner resulting in an actual conflict of interest that adversely affects the attorney's performance, the Court "**will not hesitate to provide appropriate relief.**"

The Court refused to consider the letters attached to the ACLU's amicus brief, stating that the letters were not properly before the Court because they were not part of the district court record.

Justice Nelson dissented, stating that in his view "distinguishing the various regions as different 'firms' is an artificial distinction that is not supported by actual practice within the public defender system." As evidence that the regional public defender offices are not independent law firms, Justice Nelson pointed out that Regional Deputy Ed Sheehy did not turn over Strahan's representation to Regional Deputy John Putikka. Instead, Mr. Sheehy appointed an attorney from Mr. Putikka's region to handle the case. In Justice Nelson's opinion, at that point, Mr. Sheehy violated the Public Defender Commission's own standard. Justice Nelson would have considered the letters submitted by the ACLU, stating they belie the separate firm theory. And, in conclusion, he would remand the case to the district court for a hearing to reconsider the conflict of interest issue in light of the letters and the AU report.

TAKE AWAY: Everyone in OPD must adhere to the policies, rules, and safeguards in place so as not to break ethical walls. **The Court is watching.** Although the Court has held there is no per se conflict, still we must all ensure we maintain our duties to our clients and not partake in representation where interests are adverse or where our representation will be materially limited by the representation of another client.

*"Take Away: . . .
OPD must adhere to
the policies, rules and
safeguards in place so
as not to break
ethical walls. The
Court is watching."*

OPD 5th Annual Meeting Highlights

Once again, the Annual Meeting was a huge success. The educational opportunities and guest speakers were top-notch, West Yellowstone was gorgeous and sunny, and a good time was had by all. This year's award winners were:

Ken Koski Award, **Dan Boucher**

Public Defender of the Year, **Dave Stenerson**

Rookie of the Year, **Cassidy Blomgren**

Investigator of the Year, **Rick West**

Regional recognition awards went to:

Courtney Nolan, Region 1 (Kalispell)

Nicole Ducheneaux, Region 1 (Polson)

Scott Shefloe, Region 2 (Missoula)

Nick Miller, Region 2 (Hamilton)

Larry LaFountain, Region 3 (Great Falls)

Brendan McQuillan, Region 4 (Helena)

Ben Krakowka, Region 5 (Anaconda)

Chris Petaja, Region 8 (Bozeman)

Anne-Marie Simeon, Region 9 (Billings)

David Arthur, Region 9 (Billings)

Cynthia Thornton, Region 10 (Glendive)



Investigator of the Year Rick West with Cathy Huston



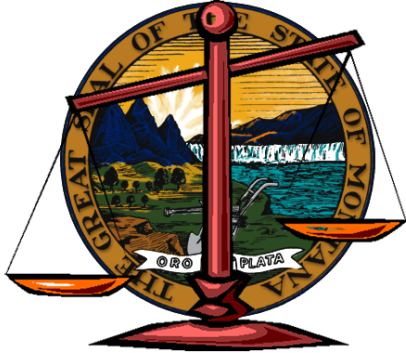
And did we say a good time was had by all at Western night? Head honcho Eric Olson and Diane Stenerson put on their hats and had a ball!



Chief Appellate Defender Joslyn Hunt and partner in crime Lisa Korchinski

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ENSURING EQUAL ACCESS
TO JUSTICE STATEWIDE

We're on the web!

www.publicdefender.mt.gov

The Office of the State Public Defender is responsible for statewide Public Defender Services, provided statewide through Regional Offices.

The mission of the Office of the State Public Defender is to ensure equal access to justice for the State's indigent and those who are statutorily entitled to services in civil cases, as well as to provide appellate representation to indigent clients.

Randi M. Hood is the Chief Public Defender for the State of Montana. She was appointed by the Public Defender Commission, currently chaired by Fritz Gillespie. For more information, please visit our website, www.publicdefender.mt.gov.



Upcoming Training Events

Friday Satellite Presentations (3:15-4:45)

December 10: *Statutory Bars to Serial Prosecution of Transactionally Related Crimes in Montana* (Matt Claus)

January 21: *Federal Consequences in State Criminal Cases* (Jason Holden)

February 17: *Sentencing Hearings in Montana*

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Lunch Hour Civil Practice Update Conferences

These discussions will be conducted by telephone conference call and will include guest speakers. Intended for practitioners within the focus area. **November 19:** DI; **December 17:** DN; **January 28:** DJ